IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

Crl.L.P..No. 312 of 2007()

CC.623/2003 of J.M.F.C.-I,KANJIRAPPALLY

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PETITIONER/COMPLAINANT

P.V.NINAN @ APPAI, S/O VARGHESE,
PAMPOORE HOUSE, PALLICKATHODU, ANICKAD,
KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS: ACCUSED AND STATE

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1. BINDU @ BABY AMMAL, W/O SIVASANKARA PILLAI, RAJ BHAVAN, PALLICKATHODU, ANICKAD, KOTTAYAM.

2. RAJAN @ SIVASANKARAN, S/O RAMANATHA PILLAI, RAJ BHAVAN, PALLICKATHODU, ANICKAD, KOTTAYAM.

3. THANKAPPAN @ KRISHNA PILLAI, CHERUSSERY HOUSE, PALLICKATHODU, ANICKAD, KOTTAYAM.

4. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

R4- BY P.P.SRI.S.DILEEP

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.312 OF 2007

Dated this the 5th day of June, 2007.

O R D E R

This is an application for special leave to appeal against the judgment passed in C.C.No.623/2003 on the file of the Judicial Magistrate of First Class-I, Kanjirappally. The trial court acquitted the respondents/accused on the ground that the complainant/appellant could not prove the case against the respondents/accused beyond reasonable doubt. The case set up in the complaint was that on 22.10.2002 at about 4 p.m the respondents/accused trespassed into the western side of the property belongs to the complainant with the common intention to commit mischief and uprooted the saplings and seedlings planted in the said property.

2. To prove the case against the respondents before the court below, four witnesses were examined and produced Ext.P1 series. The respondents were also questioned under Section 313, who had denied the allegations in the complaint. Hence, on considering the entire evidence, the trial court acquitted the respondents/accused against which this special leave to appeal has been attempted to.

3. The trial court had considered the evidence of Pws 1 to 4 out of whom, Pw1 was the complainant. The trial court found that the evidence given by these witnesses could not prove that the property alleged to have been trespassed actually belongs to the complainant as there was no documentary or oral evidence showing the ownership of the property or even possession of the property. That apart, the evidence of Pws 2 to 4 are also found untrustworthy and not revealing the actual occurrence took place on the date of the incident. It is the duty of the complainant/appellant to prove the ownership of the property alleged to have been trespassed by the respondents and the property on which the alleged mischiefs had been committed. The trial court had fully appreciated the evidence and acquitted the respondents/accused. Hence, this Court is of the view that the judgment of the trial court requires no interference. Accordingly, the petition for special leave to appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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